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A limited liability partnership formed in the State of Delaware

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Attorneys for Defendant Protective Life
Insurance Company, successor-in-interest to
Chase Insurance Life and Annuity Company,
formerly known as Federal Kemper Life
Assurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARY L. TUTTLE,

Plaintiff,

vs.

CHASE INSURANCE LIFE AND ANNUITY
COMPANY, FEDERAL KEMPER LIFE
ASSURANCE CO., SELECTQUOTE
INSURANCE SERVICES, and DOES 1-10,

Defendants.

Case No. C 07-03637 SI

**AMENDED NOTICE OF MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE
GRANTED OR FOR MORE DEFINITE
STATEMENT [F.R.C.P. 12(B)(6), (E)]**

Date: September 21, 2007
Time: 9:00 a.m.
Place: Ctrm 10, 19th Floor

Honorable Susan Illston

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 21, 2007, at 9:00 a.m. or as soon thereafter as
counsel may be heard before the Honorable Susan Illston, United States District Judge, in Courtroom
10 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California,
defendant Protective Life Insurance Company, successor-in-interest to Chase Insurance Life and
Annuity Company, formerly known as Federal Kemper Life Assurance Company (“Protective Life”)
will and hereby does move to dismiss plaintiff’s Fifth and Sixth Causes of Action as alleged in the
Complaint for failure to state a claim upon which relief can be granted. Protective Life further

1 moves to dismiss plaintiff's Fourth Cause of Action for failure to state a claim upon which relief can
 2 be granted, or alternatively, for a more definite statement. Protective Life moves on the following
 3 grounds:

4 (1) Plaintiff has failed to allege fraud with the requisite specificity, and cannot bring a
 5 breach of contract cause of action under the guise of a fraud claim;

6 (2) Plaintiff's emotional distress claim, which is in actuality a breach of fiduciary duty
 7 claim, fails because an insurer owes no fiduciary duty to an insured; and

8 (3) Plaintiff cannot state a 17200 claim based on a violation of California Insurance Code
 9 Section 790.03.

10 This Motion is based upon Rules of Civil Procedure 12(b)(6), this Amended Notice of
 11 Motion and Motion and the Memorandum of Points and Authorities (originally filed on July 23,
 12 2007, as reflected at Document Number 7 of the Court's docket), the papers, pleadings and other
 13 documents on file in this action, and such other and further oral or documentary evidence as may be
 14 presented at or before the hearing. Plaintiff filed her opposition to the Motion on August 8, 2007
 15 (Docket Number 10). Courtesy copies of Protective Life's original motion papers and plaintiff's
 16 opposition will be delivered to Judge Illston's chambers.

17 DATED: August 9, 2007.

18 REED SMITH LLP

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 20 By /s/ Eugenia S. Chern
 21 Linda B. Oliver
 22 Eugenia S. Chern
 23 Attorneys for Defendant Protective Life Insurance
 24 Company, successor-in-interest to Chase Insurance
 25 Life and Annuity Company, formerly known as
 26 Federal Kemper Life Assurance Company
 27
 28

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